Supreme Court, U. S.
FILED
APR 30 1980
MICHAEL RODAK, JR., CLERK

IN THE UNITED STATES SUPREME COURT

WASHINGTON, D.C.

CASE NO. 79-1710

ROBERT J. KONDRAT
Petitioner

vs.

BARRY M. BYRON
Respondent

PETITION FOR WRIT OF CERTIORARI

ROBERT J. KONDRAT, pro se
29121 Chardon Road
Willoughby Hills, Ohio 44092
(216) 944-0140

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PETITION FOR WRIT OF CERTIORARI

In accordance with the following applicable subparagraphs of Rule 23 of the Supreme Court of the United States, Petitioner petitions this court for a writ of certiorari to review judgement of the State of Ohio courts.

23a) In the official report delivered by the State of Ohio Supreme Court, Petitioner's appeal to that court was dismissed for the reason that no substantial constitutional question existed. Appended hereto is copy of same report.

23b) The date of the last decree sought to be reviewed is March 14, 1980. Others are as appended hereto. The statutory provision conferred on this court to review the decree in question by writ of certiorari, is Article III of the Constitution of the United States, which created the Supreme Court as a constitutional court, giving judicial

power to all cases, in law and equity, that arises under the Constitution.

23c) The question presented for review: Is the Respondent's defense of probable cause constitutional, when that probable cause was deliberately created by the Respondent for the purpose of retribution and bringing injury to others?

23d) The constitutional provision which the case involves is the Fourteenth Amendment to the Constitution which guarantees due process of law.

23e) In December, 1977, Petitioner filed a complaint in the court of first instance, naming Respondent and other defendants, as acting together and in concert, to cause the arrest and prosecution of Petitioner, without probable cause, for wrongful purposes, and in a malicious manner. The complaint

indicated that Petitioner was arrested and incarcerated for a period of seven days. Thereafter, in July, 1977, the trial court directed a verdict in favor of Respondent after the State had put on its case (State of Ohio vs. Robert Kondrat 76-CR 473). The trial court's decision laid bare the Respondent's scheme of criminal activity against Petitioner. (See pages 15 & 16 Appendix). Thereafter, Petitioner went to court to seek a remedy to relieve him of damages and injuries. Subsequently the Respondent submitted a Motion to Dismiss. Respondent's motion was denied. Respondent than submitted a Motion for Summary Judgement pleading his fabricated criminal activity which the trial court had already recognized as fabricated. Without reason, the lower court sustained Respondent's

Motion for Summary Judgement.

Petitioner appealed to the Eleventh Appellate District Court, asking to reverse the lower court's decision because Respondent's Motion for Summary Judgement was pleaded on data fabricated by Respondent. The Respondent attempted to introduce his fabricated evidence in a Request For Admissions. Petitioner objected in a Brief In Opposition to Request for Admissions. Respondent again attempted with his Motion for Order Compelling Discovery. And, again Petitioner objected to Motion For Order Compelling Discovery, Notice and Memorandum. The court then made a JUDGEMENT ENTRY which OVERRULED Respondent's Order Compelling Discovery. The court then rendered a decision in favor of Respondent, stating that there was probable cause to institute the arrests. Petitioner appealed to the

Ohio Supreme Court asking to reverse the lower court's Judgement Entry sustaining Respondent's Motion for Summary Judgement citing the Fourteenth Amendment to the Constitution of the United States, in its entirety and the fact of the fabricated probable cause. The Ohio Supreme Court dismissed the appeal for reason that no Constitutional question existed.

23f) This court is asked to permit the writ because the court of appeals has decided an important question of law in conflict with the Constitution. This Amendment guarantees that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any

person within its jurisdiction the equal protection of the laws". Yet, the Appellate Court's decision is in direct conflict with this Amendment. In effect the Appellate Court's decision has said that a Law Director of a city may seek retribution against anyone by fabricating probable cause against others and then he may use this probable cause as a defense if he is sued. Is this to be in accord with the Fourteenth Amendment?

23g) Not applicable to this case.

23h) Petitioner's court experiences has indicated that the judiciary could not exist without the close cooperation of the legal/political cadre. Nor could the legal/political faction exist without the protection from the judiciary. The two are wedded together and are dependant upon each other. In Lake County, this marriage serves basically two functions. One is to conceal corruptness and/or injustices brought about by its members and secondly; to assist each other in the productive extraction of monetary and materialistic values. The events of the Willoughby Hills Four could occur to any citizen anywhere unless it is brought to a halt by a judiciary dedicated to justice. For clarification purposes, the legal/political faction is referred to herein as one entity due to the large proportion of legal representation to be found in the political circle. Where the legal representation appears not to be found in the political circle, then generally the politician is nothing but a figurehead, but is still guided behind the scenes by the legal profession.

The combined legal/political/judicial faction exerts its power on every community,

business, household and individual in Lake County. Although this group is unproductive and contributes nothing to the economy, it thrives on the misery it creates for others. Yet, prides itself behind a mask of balanced scales. The depth of this facade is being measured.

This combined faction appears to maintain its power and influence over all by enforcing two important rules. The first is to exclude outsiders from its fraternity. In this way the group may go about its business without fear of exposure to the public. Dissidents within its ranks can expect to be disbarred, while outsiders can expect to be faced with unfavorable decisions. This type of treatment of the Petitioner and non-legal or the outsider, who seeks justice, is being denied due process of law and equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States. Justice is not a tool to be manipulated at the discretion of the judiciary for the sake of a privileged few or special group. Justice is meant for all.

The second factor that this combined group exerts to maintain its power and influence, is fear. This mode of unsuspected brainwashing, subjected upon the citizenry,

has wrecked havoc, not only in Lake County, but is evident in the nation. People have come to be afraid to defend their homes for fear of being sued by the intruder; afraid to assist others in distress for fear of ending up in court; afraid to carry a petition or exercise their Constitutional rights for fear of government retribution (as was in this case). These and other implanted programs have subconsciencely destroyed the peoples' will. This has not only contributed to the decline of confidence in Lake County but is manifest throughout this country.

These may be strong and inappropriate words for this argument, however, the Petitioner feels they are necessary at this time for the judiciary if they are to reappraise their position and reevaluate their responsibilities to

the people they serve. In this case, the judiciary in its attempt to salvage its own, has left a trail comparable to that of a wounded animal dragging itself through the snow. The more that the courts tried to hide from the facts, or escape the facts, the deeper it sank. And, it will continue to sink, unless a readjustment of its attitude is made.

The Respondent at this point is confident of riding his way through. He possesses the power, connections and backing of a dictatorial robe to do so. However, is this to be considered justice? Is this in keeping with the Fourteenth Amendment to the United States Constitution which in part states:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens

> of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws".

Petitioner would like to reiterate the words spoken at an Appellate Court's hearing of January, 1979. They were:

> "Today's case is a case contested by a Plaintiff possessing the evidence and a Defendant possessing the connections. This court's decision will show which is the more important -- the evidence and justice, or position and connections".

The above words still hold true today. The court's requirements as to formality and procedure may not have been adhered to herein for this case because the Petitioner considers this case to be too important and of great significance to each and every American. In addition, it has become evident to the Petitioner that regardless of how perfect the presentation, or, how clear the issue may be, the court will find something wrong

or, if there is nothing wrong, the court will invent something. As a result of prior court experiences, there is nothing to be gained by being precise.

The Petitioner is interested in justice -- an examination of the facts and a decision based on the facts. Petitioner is not interested in a legal shell game, played at the expense of the taxpayers. Decisions based on twisted law and contorted technicalities to be used at the court's option, never achieved a useful purpose. The latter methods, which may be acceptable to the courts, only discredit the entire purpose of its establishment. These methods are not in the interest of the people who have come to rely upon the judicial system for justice.

The facts in this case are crystal clear. There is no need to repeat them again. Hence, they are not repeated herein. The Respondent's decision in an Appellate

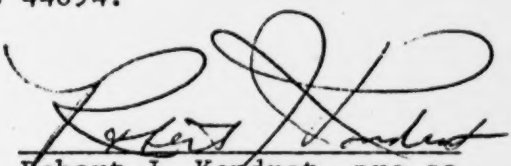
court is based upon material which even the trial court had refused to accept. Material obtained unlawfully, without the Miranda warning (see State of Ohio vs. Robert J. Kondrat, Case No. 76-CR 473), trumped-up by the Respondent, as proven by the trial, and carried out in a vicious conspiratorial scheme with others.

The Respondent was caught red-handed in his scheme and Petitioner would expect that the law would be applied equally to a member of the bar as it is applied to any citizen. Any decision less than that would only magnify the questioned integrity of the judiciary. This court is asked to grant the Petition for Writ of Certiorari and halt those who traduce the Constitution of the United States.

SERVICE

A copy of the foregoing PETITION FOR WRIT OF CERTIORARI was mailed by regular United

States mail, first class postage prepaid, on this 28th day of April, 1980 to Attorney for Respondent, Abraham Cantor, Byron and Cantor, 330 Lake West Medical Building, 36100 Euclid Avenue Willoughby, Ohio 44094.



Robert J. Kondrat, pro se
29121 Chardon Road
Willoughby Hills, Ohio
44092

cc: News Media

to cure any defect; and the defect which occurred of them all was the defect in the solicitor's affidavit as to qualified affidavit.

THE COURT: Have you ever -- the City of Willoughby Hills ever notified the defendant that there was a defect, directly, let alone within the ten-day period?

MR. FUTTERER: The Clerk stated she didn't directly. She notified the head of the committee, Mrs. Macko, and a couple of the others. The evidence speaks for itself.

THE COURT: And leaves some doubt, doesn't it, work as to a reasonable doubt?

MR. KLINGENBERG: In fact, if this case goes further, what we're going to have to do is bring in Barry Byron and confront him with the letter which he sent during the grace period to Secretary Ted Brown, accusing the defendant of criminal activity in these false affidavits. In other words, rather than giving him the chance to correct things in confronting him with the problem, with the defect, what was done was criminal evidence was being gathered, the deposition being taken, and this case was being laid against the defendant.

EXHIBIT "A"

THE COURT: And no evidence that he received the Miranda warning or that he was a suspect came in in a civil case. They compelled his attendance, cross-examined him or examined him--I'm not sure if it was direct or cross-- and without the Miranda warning, without telling him what charges they were investigating. I think that the deposition should be stricken, and it is so ordered; and that the Clerk's failure to comply with the Charter, of which I must take judicial notice, that the defendant did not receive the notice he was entitled to, to make any correction in that ten-day period, I'm going to direct the verdict at this time.

Mr. Kondrat, I'm kind of sorry to do this. I wanted to hear your side of the case.

MR. KLINGENBERG: All 50 witnesses.

THE COURT: That's all for the record. I'll just tell the jury what I have done.

- - - - -

THEREUPON, the jury returned to the courtroom, and the following proceedings were had:

THE COURT: Ladies and gentlemen

EXHIBIT "A"

STATE OF OHIO, LAKE COUNTY

IN THE COURT OF APPEALS

ELEVENTH DISTRICT

FILED
COURT OF APPEALS
DEC 3 1979
MELVIN S. REED
CLERK OF COURT
LAKE COUNTY, OHIO

ROBERT J. KONDRAT,

PLAINTIFF-APPELLANT,

- VS -

PAUL MITROVICH and STEPHEN J. FUTTERER,

DEFENDANTS-APPELLEES.

CASE NO. 7-073

RECEIVED
DEC 4 1979

OPINION.

ROBERT J. KONDRAT,

PLAINTIFF-APPELLANT,

- VS -

BARRY M. BYRON, ET AL,

DEFENDANTS-APPELLEES.

CASE NO. 7-093

APPEARANCES.

Robert J. Kondrat, Pro Se, 29121 Chardon Road, Willoughby Hills, Ohio

Abraham Cantor, Painesville, Ohio for Defendants-Appellees.

Hon. Joseph E. O'Neill,
Hon. Joseph Donofrio, JJ.,
of the Seventh Appellate District,
and
Hon. Sam H. Bell, J., of the
Ninth ~~Eighth~~ Appellate District, Sitting
by Assignment in the Eleventh
Appellate District.

Dated: December 3, 1979

O'NEILL, J.

This cause originated in the lower court when the present appellant, Robert J. Kondrat, filed a complaint naming Paul Mitrovich, Stephen Futterer, Barry Byron and other unnamed defendants.

The complaint alleged that at all times material thereto, Paul Mitrovich was the Prosecuting Attorney of Lake County, Ohio; Stephen Futterer was an Assistant Prosecuting Attorney of Lake County, Ohio; and Barry Byron was Law Director of the City of Willoughby Hills, Ohio.

The complaint further alleged that the unnamed defendants furnished various bits of information to Mr. Mitrovich and his assistants and that thereafter with this information each and all of the defendants caused Mr. Mitrovich by himself or through his assistant, Mr. Futterer, to cause the arrest of plaintiff on four counts of perjury. The complaint went on to allege that all charges were ultimately dismissed and that the arrests were false and wrongful causing damage to the plaintiff.

Defendants Mitrovich and Futterer filed a motion for summary judgment (10-19-78). Attached thereto were their affidavits affirming that all acts alleged in the complaint were performed by them in their official capacities and duties. The trial court sustained this motion on January 10, 1979. The court advanced as support for his judgment, the finding that defendants Mitrovich and Futterer were entitled to immunity in the performance of their official duties. Upon the matters before him, the pleadings and affidavits, the trial judge was not in error in his judgment. The complaint

alleged and defendants Mitrovich and Futterer admitted that at all pertinent times they were officially designated prosecutors. The U.S. Supreme Court has ruled that actions of a prosecutor within his official parameters are clothed with immunity. In the case of Imbler v. Pachtman, 47 L. Ed. 2d 128, the United States Supreme Court held that a state prosecutor who acted within the scope of his duties in initiating and pursuing a criminal prosecution was absolutely immune from a civil suit for deprivations of the defendants' constitutional rights. The court further held that such immunity was applicable even where the prosecutor knowingly used perjured testimony, deliberately withheld exculpatory information, or failed to make full disclosure of all facts casting doubt upon the state's testimony. The judgment of the trial court as to defendants Mitrovich and Futterer is affirmed.

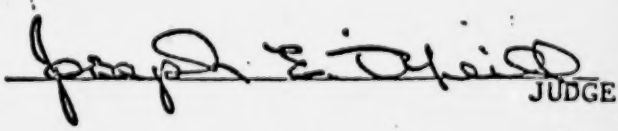
The complaint did not allege any specific acts as to defendant Barry Byron. It simply alleged "all of the Defendants" caused defendants Mitrovich and Futterer to bring about the arrest of plaintiff. Defendant Byron filed a "Request for Admissions" requesting the plaintiff to admit that he had not seen a person named Jack O. Yeager sign a re-call petition even though plaintiff, under oath, had sworn that he witnessed such signature. This "Request" was not answered. Pursuant to Rule 36, Ohio Rules of Civil Procedure, the failure to respond, amounted to an admission of perjury. On October 30, 1978, defendant Byron filed a motion for summary judgment citing to the court's attention the aforementioned admission. There was also attached to the motion an affidavit by Jack O. Yeager swearing that he had

never affixed his signature to the recall petition which plaintiff, under oath, had sworn he circulated and witnessed all signatures. There was also an affidavit by Marcille Yeager wherein she swore that she signed the signature of Jack O. Yeager to the petition but not in the presence of plaintiff Kondrat. There were also attached copies of four petitions bearing the plaintiff's jurat that he had witnessed all the signatures thereto. These copies were certified by the Clerk of Council for the City of Willoughby. Each petition bore the signature of Jack O. Yeager and it was these signatures he denied signing and these signatures were admittedly affixed by his wife. Plaintiff's response raised no probative nor credible rebuttal. The court sustained the motion, properly, The motion raised four instances of perjury. The plaintiff did not meet the issue. The complaint alleged four arrests for perjury. Upon the pleadings and affidavits, the trial court could reasonably conclude that there was probable cause to institute the arrests and that plaintiff was not entitled to judgment.

Judgment affirmed.

Donofrio, J., concurs.
Bell, J., concurs.

APPROVED:



JUDGE

Hon. Joseph E. O'Neill,
Hon. Joseph Donofrio, JJ., Seventh District;
Hon. Sam H. Bell, Ninth District;
By Assignment to Eleventh District.

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

CASE NO. 77 CIV 0917

ROBERT J. KONDRAT)
)
PLAINTIFF)
)
VS) OPINION
)
PAUL MITROVICH ET AL)
)
DEFENDANTS)

THE HONORABLE J. WARREN BETTIS, JUDGE

APPEARANCES:

MR. HERBERT BRAVERMAN, Cleveland, Ohio
ON BEHALF OF PLAINTIFF

MR. CHARLES E. COULSON, Painesville, Ohio
ATTORNEY FOR DEFENDANT FUTTERER

MR. PAUL MITROVICH, Willowick, Ohio
ON BEHALF OF DEFENDANT MITROVICH

MR. GEORGE HASKKELL, Painesville, Ohio
ON BEHALF OF DEFENDANT BYRON

MARY BANAR
ASSISTANT COURT REPORTER

THE COURT:

Plaintiff has brought an action for malicious prosecution and false arrest against the Prosecuting Attorney of Lake County, Ohio, an Assistant Prosecuting Attorney of said County, the Law Director of Willoughby Hills, Ohio, and certain unknown Defendants.

The Defendants have filed motions to dismiss for failure to state a claim upon which relief may be granted. Defendants Futterer and Mitrovich have also asked for Summary Judgment in the alternative.

The Defendants base their motions on the claim of absolute prosecutorial immunity. Defendants cite the case of Imbler v. Pachtman, 424 U.S. 409, 47 L. Ed. 2d 128 (1976) as being applicable herein.

The Imbler case dealt with a situation in which the Plaintiff had knowingly used false testimony and suppressed evidence, when the Plaintiff had been prosecuted for murder ten years earlier. The Plaintiff brought the action under 42 U.S.C. Section 1983 seeking damages for unlawful prosecution.

The Supreme Court discussed the necessity of protecting prosecutors from undue harassment and enabling them to retain independent judgment, and went on to hold that a State Prosecutor has absolute immunity under Section 1983 when he acts within the scope of his prosecutorial duties, i.e. when he performs acts permitted by law.

The Court, however, distinguished between activities which are an integral part of the judicial process (Prosecutor's

role as advocate in initiating prosecution and presenting the case) and those which are performed by the prosecutor in the role of administrator or investigator.

In this regard, the Supreme Court stated with reference to the Ninth Circuit Court of Appeals opinion below:

"The purpose of the Court of Appeals' focus upon the functional nature of the activities rather than the respondent's status was to distinguish and leave standing those cases, in its circuit and some others, which hold that a prosecutor engaged in certain investigative activities enjoys not the absolute immunity associated with the judicial process, but only a good faith defense comparable to a policeman's. ...We agree with the Court of Appeals... 424 U.S. 409, at 430.

Thus, in some instances a prosecutor is entitled only to a qualified, good faith immunity, rather than an absolute one. See, Williams vs. Wright, 432 F. Supp. 732 (1976); Helstoski v. Goldstein, 552 F. 2d 564 (3rd Cir. 1977).

For this reason, the Court finds that it is necessary to hear more evidence in this case to determine what type of alleged prosecutorial activity is involved herein.

The Court notes that defendants Mitrovich and Futterer also claim as a basis for dismissal the fact that the warrant to arrest Plaintiff was issued pursuant to a Grand Jury indictment. This fact does not alter the Court's conclusion.

Therefore, the Motions to dismiss made by Defendants Mitrovich, Futterer and Byron are denied.

Insofar as an issue of fact does exist in the within case, the motions made by Defendants Mitrovich and Futterer for summary judgment are also denied.

J. WARREN BETTIS, JUDGE

DATED: May 23, 1978

SC-10A 79-10-1 BARRETT BROTHERS, PUBLISHERS, SPRINGFIELD, OHIO

THE SUPREME COURT OF OHIO

RECEIVED MAR 17 1980

THE STATE OF OHIO,
City of Columbus.

Robert J. Kondrat,
Appellant,
vs.
Barry r. Byron,
Appellee.

19 80 *TERM*
To wit: March 14, 1980

No. 80- 20

APPEAL FROM THE COURT OF APPEALS

for LAKE *County*

This cause, here on appeal as of right from the Court of Appeals for LAKE *County, was considered in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.*

FOR YOUR INFORMATION ONLY NOT FOR FILING

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for LAKE *County for entry.*

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this.....day of..... 19.....

.....*Clerk*

.....*Deputy*

FILED
COURT OF APPEALS
DEC 3 1979
MELVIN S. REED
CLERK OF COURT
LAKE COUNTY, OHIO

STATE OF OHIO)
)SS.
COUNTY OF LAKE)

IN THE COURT OF APPEALS

ELEVENTH DISTRICT

RECEIVED
DEC 4 1979

ROBERT J. KONDRAT

Appellant

- vs -

PAUL MITROVICH, ET AL.

Appellees

JUDGMENT ENTRY

CASE NO. 7-093

This cause came on to be heard upon the Record in the Trial Court, and was briefed and argued by counsel for the parties.

Upon consideration whereof, this Court finds no error prejudicial to the appellant and, therefore, the judgment of the Trial Court is affirmed. Each Assignment of Error was reviewed by the Court and disposed of as set forth in this Court's Opinion, which is incorporated herein by reference.

It is ordered that appellee recover of appellant the costs herein taxed.

This Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Trial Court to carry this judgment into execution. A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

JUDGE JOSEPH E. O'NEILL, Seventh District, Sitting by Assignment
FOR THE COURT
(JOSEPH DONOFRIO, Seventh District; SAM H. BELL, Ninth District, By Assignment to Eleventh District)

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

ROBERT J. KONDRAT	)	
	)	
PLAINTIFF	)	CASE NO. 77 CIV 0917
	)	
VS	)	JUDGMENT ENTRY
	)	
PAUL MITROVICH, ET AL	)	
	)	
DEFENDANTS	)	

This matter comes on for decision on Defendant Barry M. Byron's Motion for Summary Judgment.

Motion sustained.

J. Warren Bettis

J. WARREN BETTIS, JUDGE

DATED: February 15, 1979

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IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

CASE NO. 77 CIV 0917

Received 10-10-78

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LAKE CO. CLERK OF COURTS

ROBERT J. KONDRAT

PLAINTIFF

VS

PAUL MITROVICH, ET AL

DEFENDANTS

JUDGMENT ENTRY

Motion of Defendant Byron for an order compelling discovery OVERRULED. The Court directs counsels attention to the second sentence of the second paragraph of Rule 36: "The matter is admitted unless, within the period designated in the request, not less than twenty-eight days after the service thereof or within such shorter or longer time as the Court may allow, the party to whom the request is directed serves upon the party requesting the admission, a written answer or objection addressed to the matter, signed by the party or his attorney."

J. WARREN BETTIS, JUDGE

Dated: September 28, 1978

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

ROBERT J. KONDRAT	)	
	)	
PLAINTIFF	)	CASE NO. 77 CIV 0917
	)	
VS	)	JUDGE: J. WARREN BETTIS
	)	
PAUL MITROVICH ET AL	)	
	)	JUDGMENT ENTRY
DEFENDANT	)	

Motions to dismiss made by Defendants Mitrovich, Futterer and Byron are denied.

Motions of Futterer and Mitrovich for Summary Judgment are denied.

See Opinion.

J. WARREN BETTIS, JUDGE

DATED: May 23, 1978